



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 25, 1998

Mr. Helmut (Hal) Talton
Associate General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Bldg.
125 E. 11th Street
Austin, Texas 78701-2483

OR98-2872

Dear Mr. Talton:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 120026.

The Texas Department of Transportation (the "department") received an open records request for individual witness statements that were taken during the course of an investigation of alleged sexual harassment and other complaints. You seek to withhold the requested witness statements, a representative sample of which you have submitted to this office for review, pursuant to section 552.101 of the Government Code in conjunction with the common-law right of privacy.

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. See also *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), cert. denied, 430 U.S. 931 (1977) (common-law privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and is of no legitimate concern to the public). The investigatory files at issue in *Ellen* contained individual witness and victim statements, an affidavit given by the individual accused of the misconduct in response to the allegations, and the conclusions of the board of inquiry that conducted the investigation.

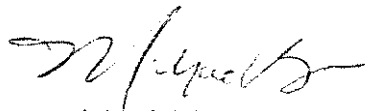
The court held that the names of witnesses and their detailed affidavits regarding allegations of sexual harassment was exactly the kind of information specifically excluded from disclosure under the privacy doctrine as described in *Industrial Foundation. Ellen*,

supra, at 525. However, the court ordered the release of the affidavit of the person under investigation, in part because it ruled that he had waived any privacy interest he may have had in the information by publishing a detailed letter explaining his actions and state of mind at the time of his forced resignation. *Id.* The *Ellen* court also ordered the disclosure of the summary of the investigation with the identities of the victims and witnesses deleted from the documents, noting that the public interest in the matter was sufficiently served by disclosure of such documents and that in that particular instance "the public [did] not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements." *Id.*

In this instance, you inform us that the department had previously released a copy of the "Letter of Determination" and the "Report of Investigation" to the requestor, with the names of witnesses redacted. After reviewing these two documents, we conclude that the department has released an adequate summary of the investigation to the requestor. Consequently, in accordance with *Ellen*, the department must withhold the individual witness statements from the requestor, except for his own, pursuant to section 552.101 of the Government Code.¹ *See* Gov't Code § 552.023.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael J. Burns
Assistant Attorney General
Open Records Division

MJB/RWP/ch

Ref.: ID# 120026

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Enclosures: Submitted documents

cc: Mr. Ronald Houston
905 E. 51st Street, Apt. 101
Austin, Texas 78751
(w/o enclosures)